

THE INTERIM

SEPTEMBER 2002 HELENA, MONTANA VOL. XIII NO. 16

TRANSITION ADVISORY COMMITTEE

Committee to Review Default Energy Supply Options...The Transition Advisory Committee is scheduled to meet Thursday, Sept. 19, in Missoula at Ruby's Inn and Convention Center, 4825 N. Reserve St. A starting time has not been set, but it will likely be between 9 and 10 a.m. The primary purpose of the meeting is to review and discuss policy options on default energy supply presented by Matthew Brown from the National Conference of State Legislatures. Sen. Stonington will also present a proposal discussed at the last meeting regarding renewable energy as a component of the default supply portfolio. Other agenda items will include a report from the Transmission Subcommittee and an update on the efforts of a working group to establish energy supply procurement procedures for NorthWestern Energy. Following the meeting, Committee members will attend a regional forum on "BPA Power Marketing After 2006." The forum is scheduled from 6 p.m. to 9 p.m., and will be held in the same room as the TAC meeting.

Giga-NOPR on Tap...The Transmission Subcommittee is meeting Friday, Sept. 13 at 9 a.m. in Room 137 of the Capitol. The tentative agenda includes:

- a review of the Federal Energy Regulatory Commission's "giga-NOPR" (notice of proposed rules) on standard market design and the "FERC 101/102" seminar held in Houston;
- a presentation from Marilyn Showalter, Chair, Washington Transportation and Utilities Commission, on the potential conflict between the states' and FERC's policy goals related to energy markets and regional transmission organizations;
- FERC's order related to RTO-West and implications of standard market design on the RTO;
- Western Area Power Administration's transmission study;
- oil sand energy development in Alberta and alternative transmission line proposals to move energy to the Pacific Northwest; and
- synopsis of subcommittee activities and discussion of issues and options.

If adopted, the new FERC rules anticipate an aggressive implementation schedule for the development of competitive wholesale energy markets and regional transmission organizations. The filing deadline for comments on the giga-NOPR is mid-October, and the subcommittee may discuss whether it wants to be a party to any comments.

If you have questions or comments about the meetings, call Jeff Martin at (406) 444-3595 or send an e-mail to jmartin@mt.gov. Todd Everts, committee staff attorney, may be reached at (406) 444-3747 or by e-mail at teverts@mt.gov.

ECONOMIC AFFAIRS COMMITTEE

Committee Meets in August...The Economic Affairs Interim Committee (EAC) met in Helena on Aug. 30. The meeting had not taken place at the time of this writing. However, the agenda included: the EAC preview of legislative proposals from the Department of Commerce, the Governor's Office of Economic Opportunity, and the State Auditor and Insurance Commissioner; a report from the SJR 22 Subcommittee on Health Care and Health Insurance; and a staff briefing on issues of proposed administrative rules affecting nurse anesthetists.

The EAC is scheduled to hold its final meeting of the interim on Friday, Sept. 13, in Helena.

SJR 22 SUBCOMMITTEE ON HEALTH CARE AND HEALTH INSURANCE

Subcommittee Reviews Health Care Assistance...The SJR 22 Subcommittee on Health Care and Health Insurance of the Economic Affairs Interim Committee (EAC) met on Aug. 29 to continue examining and discussing the pros and cons of a tax credit for insurance premiums. Through its Tax Credit Working Group, the SJR 22 Subcommittee has focused on the possibility and advisability of establishing a refundable, advanceable tax credit to low-income individuals or to "small businesses", or both. As of this writing, the subcommittee had not made a recommendation regarding the tax credit option.

The subcommittee also continued its consideration of expanding or extending the insurance and health care coverage provided through the state Children's Health Insurance Program, or CHIP. Additionally, the subcommittee also engaged in a briefing on and discussion of a prescription drug purchasing pool initiated by the state of West Virginia. As with the tax credit for insurance premiums, the subcommittee had not made any recommendation as of this writing. Subcommittee Chairman, Rep. Joe McKenney, indicated that he intends for the subcommittee to complete its work, including any recommendations on the tax credit, CHIP, and the Rx purchasing pool, on Thursday, Sept. 12, in Helena.

For more information about the EAC or the SJR 22 Subcommittee, contact Dave Bohyer at 444-3064 or by e-mail at dbohyer@mt.gov.

LAW AND JUSTICE COMMITTEE

Committee to Meet in September...The committee is scheduled to meet on Monday and Tuesday, Sept. 9 and 10, at the state Capitol in Helena. Items anticipated to be discussed include draft legislation requested by the committee, draft final reports, and possibly recommendations for future activities of the Law and Justice Interim Committee appointed for the 2003-04 interim. There will also likely be presentations on and committee discussion of the effects of the expenditure reductions ordered by the governor in June and the appropriation reductions passed by the Legislature during the August special session. A tentative agenda of the September meeting, when it is available, will be posted to the committee's website

For more information about any of the committee's activities, contact Dave Bohyer by phone at (406) 444-3064 or by e-mail at dbohyer@mt.gov, or the presiding officer of the committee, Rep. Gail Gutsche in Missoula by phone at (406) 728-0566.

LEGISLATIVE FINANCE COMMITTEE

Special Session Fiscal Report Complete...The Legislative Fiscal Division (LFD) has prepared the *Legislative Fiscal Report, Special Session, August 2002* to document actions of the Legislature during the recent special session. The report is available on the LFD website at <http://leg.mt.gov/fiscal/index.htm> and printed copies will have been mailed to legislators by the end of August. For further information, contact Clayton Schenck at cschenck@mt.gov or by telephone at (406) 444-2986.

ENVIRONMENTAL QUALITY COUNCIL

Environmental Quality Council...The EQC met in Helena on July 30. During the meeting, the EQC reviewed 2003 legislative proposals from the Department of Environmental Quality (DEQ) and the Department of Natural Resources and Conservation (DNRC). After a question-and-answer session and extensive discussion, the EQC authorized the drafting of all proposals requested by the DEQ and all but one of the proposals requested by the DNRC. The EQC did not authorize the drafting of a DNRC proposal to increase the hazard reduction program fees.

The EQC also discussed a memorandum prepared by Todd Everts regarding provisions of the Metal Mine Reclamation Act that were declared unconstitutional by First District Court Judge Thomas Honzel in National Wildlife Fed. v. Mt. Dept. of Environ. Quality (Docket No. CDV-92-486, Decided March 21, 2002). Judge Honzel concluded that, because the Metal Mine Reclamation Act precludes the DEQ from requiring backfilling except to the extent necessary to meet state air and water quality standards, the statute violates Article IX, section 2 of the Montana Constitution, which requires that all lands that have been disturbed by the extraction of natural resources be reclaimed.

Historically, the Code Commissioner brought these invalidated sections of law to the now defunct Administrative Code Committee and that committee requested a cleanup bill to remove the unconstitutional provisions from the Montana Code Annotated (MCA). Interim committees now have the responsibility to review invalidated sections of law that fall within the subject matter assigned to the committee and to request code cleanup bills when warranted. The fundamental premise behind removing invalidated sections of law is that people should know that they are reading the most current law available in the state. Everts provided the EQC with two options to deal with the unconstitutional provisions: (1) do nothing and leave in place the unconstitutional provisions; or (2) request legislation to remove the unconstitutional provisions from the MCA. The EQC did not choose either of these options, but instead requested that Everts research the issue further and report to the EQC at its September meeting on whether language could be drafted that was constitutional and in accordance with the intent of the original legislation.

In May 2002, the EQC sent a letter to the Montana Department of Fish, Wildlife, and Parks (DFWP) with specific questions regarding management of sage grouse in Montana. The director of the DFWP, Jeff Hagener, and DFWP staff attended the July 30 EQC meeting, answered the questions posed in the EQC letter, and provided a brief summary of the current status of sage grouse management in Montana. The U.S. Fish and Wildlife Service has received a petition for listing the sage grouse under the federal Endangered Species Act. This action may affect how the DFWP will proceed with plans to develop a statewide Sage Grouse Conservation Plan.

The EQC is required by law to analyze and comment on the Renewable Resource Grant and Loan Program. In an effort to become better informed about the program and to fulfill its statutory responsibilities, the EQC heard a presentation from John Tubbs, Chief of the DNRC's Resource Development Bureau, on the 2002 applications for both the Renewable Resource Grant and Loan Program and the Reclamation Development Grant Program.

The EQC's final meeting of the 2001-02 interim will be Friday, Sept. 13, at 8 a.m. in Room 102 of the state Capitol. The agenda and other information related to the EQC and its subcommittees, including minutes, staff reports, and draft proposals are available on the EQC website at <http://leg.mt.gov/services/lepo/index.htm> or by contacting the EQC office at (406) 444-3742 or mtheisen@mt.gov.

Coal Bed Methane/Water Policy Subcommittee...The subcommittee held its final meeting of the interim on July 29 in Helena. The subcommittee:

- Received an update on the status of litigation related to coal bed methane development in Montana.
- Reviewed the revised EQC Water Quality Regulation Handbook.
- Heard reports from staff and members on new developments related to water policy and coal bed methane development.
- Heard a report from staff on the Board of Environmental Review's plans to

initiate rulemaking to establish numeric standards for electrical conductivity and sodium adsorption ratios as well as the Board's request that the parties interested in this issue work together to resolve their differences and report back to the Board in September 2002.

- Reviewed and made revisions to the draft report *Coal Bed Methane and Water Policy in Montana, 2002*. The subcommittee approved the report with a few changes and recommended that it be presented to the full EQC for its approval at the September EQC meeting.

For more information about the subcommittee's activities, visit the EQC website (see above for address) or contact the subcommittee's staff:

Coal Bed Methane --Mary Vandembosch at (406) 444-5367 or by e-mail at mvandembosch@mt.gov.

Water Policy -- Krista Lee Evans at (406) 444-3957 or by e-mail at kevans@mt.gov.

Agency Oversight/MEPA Subcommittee...The EQC Subcommittee on Agency Oversight and the Montana Environmental Policy Act (MEPA) held its last meeting of this interim on July 29 in Helena. The subcommittee reviewed executive branch responses to subcommittee initiated inquiries and requests on the following topics:

- the need for state guidance for the cleanup of real estate contaminated by methamphetamine labs;
- suggestions to hasten remediation and development of contaminated real estate in Missoula;
- guidance to reporting agencies regarding the timing and content of the biennial environmental compliance and enforcement reports; and
- the need for a temporary 1/4 cent increase in the per gallon fee on fuels that finances the underground storage tank cleanup program for tank owners.

An informal hearing on the Petroleum Tank Release Compensation Fund confirmed that annual fund expenses are currently exceeding the annual fund revenue. Gas tax revenue is down and program costs are up for a variety of reasons. Program officials from the DEQ said that agency program implementation costs have been relatively flat for the past several years. Although the number of new releases are significantly down, tank owner reimbursement costs are up. The cost increase is due, in part, to a temporary backlog of claims resulting from the remediation of leaks discovered around the 1998-1999 federal deadline for removal or upgrading of underground storage tanks. Montana Petroleum Marketers Association officials expressed some concern that the cost of claims is too high. However, remediation consultants stated that Montana's costs were in the lower range of costs for tank release cleanup in neighboring states. It was suggested that perhaps agency claim review procedures, site closure decisions, and work plan approvals could be streamlined to expedite remediation and claim payment and to reduce administrative costs. The fee supporting the fund has not been raised since the inception of the fund in 1989. A temporary 1/4 cent per gallon fee increase was discussed as a possible solution to resolve the current fund solvency problem.

DEQ Director Jan Sensibaugh briefed the subcommittee on state agency staffing problems. The subcommittee has heard testimony this interim that limited staffing and staff turnover rates are especially impacting the cleanup of contaminated sites in Montana. Sensibaugh explained what the agency is trying to do to reduce turnover and to fill positions given the state of the budget. She confirmed that one of the biggest problems the agency has is not having the number of people necessary to do the work. The agency is funded mostly with federal dollars and with state fee-based permitting. The remediation division does not receive any state general fund money. It is funded with state fees, Resource Indemnity Trust (RIT) interest and taxes, and federal dollars.

A final report on MEPA litigation during this interim was presented. There were 12 agency decisions that were challenged, at least in part, on the basis of the inadequacy of the environmental analyses. All cases involved the issuance of state permits. Eight of the cases went to court while the other four were administrative appeals. In seven cases, the MEPA issue was waived, withdrawn, or dismissed, but one District Court dismissal has been appealed to the Montana Supreme Court. Of the remaining five cases, one is an administrative appeal of a mine air quality permit, and the other four are District Court cases that include a MEPA cause of action in the complaint. Three cases involve coal bed methane development and water discharge, and the remaining case involves water discharges from a proposed commercial livestock feedlot.

The subcommittee reviewed public comments on two draft documents intended to solicit substantive public comments and participation in MEPA decision making. A final revision is intended to be made available for use by state agencies and the public. An updated revision of the EQC document, A Guide to the Montana Environmental Policy Act, was also reviewed.

For more information about the subcommittee's activities, visit the EQC website (see above for address) or contact the subcommittee's staff, Larry Mitchell, at (406) 444-1352 or by e-mail at lamitchell@mt.gov.

Energy Policy Subcommittee...The EQC Energy Policy Subcommittee held its last meeting of the interim on July 29 in Helena. The subcommittee spent a number of hours reviewing, discussing, and incorporating most of the public comments that had been made on the *Energy Law Handbook* and the *Understanding Electricity in Montana* publications. The subcommittee formally recommended to the full EQC that the two energy publications be approved and the EQC unanimously approved both publications on July 30. These educational publications will be available to legislators and members of the public this fall. Over the interim, the Energy Policy Subcommittee sifted through and analyzed a mammoth amount of information on energy issues. For more information about the subcommittee's activities, visit the EQC website (see above for address) or contact the subcommittee's staff, Todd Everts at (406) 444-3747 or by e-mail at teverts@mt.gov.

DISTRICTING AND APPORTIONMENT COMMISSION

Western Region Hearings...The commission held its western region hearings in Kalispell on Aug. 12 and in Pablo and Missoula on Aug. 13. The commission will accept written testimony on the proposals through Sept. 3, 2002, and will tentatively adopt a plan for this region on Sept. 16.

Commission to Meet in November and December...Following the adoption of the western region plan, the commission will not meet again until after the elections in November. The commission is expected to meet during the week of the Legislative caucuses (see the calendar on page 21) to hear public testimony on the pairing of House districts into Senate districts. The proposals will be available the week of Nov. 11 and will be mailed to interested persons and to all newly elected senators.

The commission will meet the first week in December for its only statutorily-required public hearing. It will take testimony on all 100 House districts and 50 Senate districts. If you have any proposed amendments, please contact Susan Fox for assistance as soon as possible in order to be prepared for the December meeting. If you have additional comments and written testimony to provide to the commission, please send them to: Districting and Apportionment Commission, PO Box 201706, Helena MT 59620. Comments and testimony will be copied and sent to each commissioner and the originals retained for the permanent file.

Regional District Maps Available...Regional maps of the proposals and adopted legislative districts for the north-central, northeast, southeast/central, south-central, Southwest and western regions are available through the "Redistricting" link on the legislative website.

Please check the commission's website for more information at the "Redistricting" link on the Legislative Branch website at leg.mt.gov. For more information, contact Susan Byorth Fox, (406) 444-3064 or sfox@mt.gov.

CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE

Committee Holds Final Meeting...The committee's final meeting was held Aug. 23, and it received numerous required reports from Gail Gray, Director, Department of Public Health and Human Services, and updates on the centralized intake process, medicaid assessment concept. The committee received information regarding a legislative audit of Child Protective Services and attended the state's exit interview with federal representatives who have completed a statewide assessment of the Child Protective Services system. The committee also received its regular administrative rule review report and a report on other related study resolutions.

The committee received a brief summary on 22 DPHHS legislative proposals. On behalf of the department, the committee formally requested that the drafts be prepared

for consideration by the full Legislature. The Addictive and Mental Disorders Division presented four proposals regarding civil commitments for mental illness, a transfer provision for the guilty but mentally ill, commitment by a guardian to the Mental Health Nursing Care Center, and making the multiagency children's service initiative permanent. The Child and Family Services Division had six proposals regarding housekeeping changes and changes in the definition of abandonment, timelines, age of children served, and release of certain adoption records for tribal enrollment purposes; requiring that only children who are at risk or who are being abused or neglected will be served; the substantiation process; exit and entrance standards; community collaboration; and a placeholder for Court Appointed Special Advocate program, if needed. The Fiscal Services Division had three proposals regarding deposit of payments from certain institutions to the general fund; changes to statutory dates required to compute per diem costs; and a response to an audit exception and repeal of the health care database requirement. The Health Policy Services Division had five proposals regarding the Model Emergency Health Powers Act; health information coding and confidentiality in administrative rules; tourist homes and requirements for pools/spas; a placeholder for food establishment license fees; and a change to the licensing of food manufacturers. The Human and Community Services Division had one proposal regarding funding and tribal administration of TANF programs. The Quality Assurance Division had three proposals regarding licensure of certain facilities, and a proposal on personal care facilities based on department findings under SB 420 (Ch. 331, L. 2001). The Committee also requested a placeholder for a previously shared priority regarding the Montana Veteran's Home to ensure that a draft comes forward.

This courtesy of requesting bills be drafted is a result of SB 10 (Ch. 210, L. 2001) that revised the duties of interim committees to provide a process that agencies of the executive branch may have their bills drafted for preintroduction purposes and to give standing committees an idea of potential legislation. It is not intended as an endorsement of any proposal and the committee did not review bill drafts, only received brief summaries, as the full Legislature will consider the bill drafts.

The Committee adopted proposals to be drafted for further development and information in the following areas:

- persons with developmental disabilities and Title 46, chapter 18, MCA, regarding criminal procedure and mental disease or defect;
- respite care: wage and hour issues; and
- a study resolution regarding public defenders, advocates, or family ombudsmen serving families just entering the child protective services system.

If you need further information about the committee, please contact Susan Byorth Fox, Research Analyst, at the Legislative Services Division at (406) 444-3597 or at sfox@mt.gov or visit the committee's website.

UPCOMING LEGISLATIVE EVENTS

Reminder of Post-election Events...The Legislative Council has set the following dates in November for presession caucuses, Law School for Legislators (a continuing education program for all legislators), and new legislator orientation:

Senate and House Caucuses	Wednesday, Nov. 20 (morning)
Law School for Legislators	Wednesday, Nov. 20 (afternoon)
New Legislator Orientation	Wednesday, Nov. 20 (evening) through Friday, Nov. 22

Here's a brief description of these activities:

Senate and House caucuses: The political parties of each house of the Legislature will meet to elect officers and conduct other presession business.

Law School for Legislators: This half-day program, sponsored by the Legislative Council and the Montana Bar Association, provides continuing education for all legislators. Topics include fundamentals of the Montana Constitution, statutory construction and legislative intent, legislative impact on executive branch rulemaking, and ethics.

New Legislator Orientation: This program, sponsored by the Legislative Council, is for new legislators. It kicks off with a reception on the evening of November 20. The next two days are packed with courses that help new lawmakers to hit the ground running.

For more information, call Lois Menzies at (406) 444-3066 or send an e-mail message to lomenzies@mt.gov.

LEGISLATIVE REFERENCE CENTER

I am pleased to announce that the new library technician, Lorna McMurray, will be starting in the Legislative Reference Center on Monday, Aug. 26. Lorna comes to us from Travel Montana, where she served as assistant to the Administrator of the Montana Promotions Division. Prior to that, she worked as an information tech at NRIS in the state library. Lorna's other relevant job experience includes a stint as a proofreader of administrative rules for the Montana Secretary of State's office, and assistant librarian at Boulder Community Library. Also of interest, Lorna spent 17 years serving as a minister for the Johrei Fellowship (based in Torrance, CA), can translate Japanese, has a degree from the Sangetsu School of Flower Arranging, and is an accomplished actress, singer, and flutist (and she tells me she writes limericks!). I predict she will be an interesting and competent addition to our ranks!

DEAR MASON AND ROBERTS

Dear Mason and Roberts: The golden rule, rules of etiquette, the rule of thumb, The Exalted Ruler, the rule of 78ths, Road Rules, contest entry rules--seems like everywhere I turn, there are rules, rules, rules! While I am certainly trying my best to absorb and comply with all the other rules in life, I am particularly interested in mastering the legislative rules. I'm starting to understand that the legislator who knows the rules often wins the "game"! To play the game--you have to know the rules. To play the game well--you need to know them even better. I'm thinking that it might also be helpful for me to get a better grasp on adopting, amending, and suspending the legislative rules and related topics. So please fill me in on the rules about the rules.

Sincerely,
Representative Rula Lenska

Dear Representative Lenska: As a general rule, we are both pretty fond of rules, and we both have our own books (available at your local bookstore!) called Mason's Manual of Legislative Procedure and Robert's Rules of Order. Pick up a copy sometime, and we'd both be delighted to sign your books! So, before the 2003 Games begin, here are our answers to your questions about how the legislative rules become the rules!

Q: How does the Legislature go about adopting rules for each session?

A: Each December in even-numbered years, the Senate and House Rules Committees meet jointly and separately to recommend joint, Senate, and House rules for the upcoming session. The recommended rules are incorporated into a joint resolution for the joint rules and two simple resolutions, one for each chamber. A majority vote in favor of the joint resolution is needed in each chamber to adopt the joint rules. Likewise, the simple resolutions must be adopted by a majority vote in the respective chamber. (No third reading is required in the House.) (Joint Rule 40-60, Senate Rule 40-10, House Rules 40-20 and 70-10)

Joint, Senate, and House rules for a special session typically are adopted through an identical motion made on each floor during the initial floor session; a majority vote in favor of the motion is needed to adopt the temporary rules.

Q: When are the joint, Senate, and House rules effective? When do they terminate?

A: The rules governing a regular session are effective on passage of the joint, Senate, and House resolutions. They remain in effect until adoption of the rules for the next regular session. The rules governing a special session, which amend the regular session rules, are effective for the duration of the special session only. After the special session, the Legislature reverts to the rules of the regular session.

Q: What's the procedure for amending the rules after adoption?

A: A joint resolution or floor motion may be used to amend the joint rules; passage of the resolution or motion requires a favorable vote from a majority of legislators in both houses (Joint Rules 40-60 and 60-10). A simple resolution or motion may be used

to amend Senate rules; in the House, a simple resolution may be used. (It is unclear in the House rules whether a motion may be used for amendment purposes.) The resolution or motion must be referred to the chamber's rules committee for consideration. (Senate Rules 40-10 and 60-10; House Rules 50-150 and 70-10)

In the Senate, members must receive 1 day's notice before voting on a resolution or motion seeking to amend the rules. Adoption of the amendments requires a favorable vote from a majority of the Senators. (Senate Rule 60-10)

In the House, the Rules Committee must report within 1 day of referral. Two-thirds of the Representatives must vote in favor of the resolution or motion to amend the rules. (House Rule 70-10)

Q: May the rules be suspended? If so, how is that done?

A: Rules provided for in the Montana Constitution or a state law cannot be suspended unless the Constitution or statute permits suspension. Other rules, however, may be suspended by a successful motion to do so. The motion may be offered during Order of Business No. 6 (Motions) in the Senate or Order of Business No. 9 (Motions) in the House. Or the motion may be made during the order of business related to the matter proposed to be considered under suspension of the rules. (Mason's, sec. 282) The motion to suspend may not be amended, debated, tabled, referred to committee, postponed, or reconsidered on the same day (Senate Rule 50-60, House Rules 50-80 and 60-20, Mason's, sec. 282). Suspension of the Senate or House rules requires a favorable vote from two-thirds of the members (Senate Rule 60-10, House Rules 50-150 and 70-30).

Joint Rule 60-10 allows a joint rule governing the procedure for handling bills to be temporarily suspended by the consent of two-thirds of the members of either house, as it applies to the house suspending it. Also note that House Rule 70-60 provides that a House rule governing internal House proceedings supersedes a joint rule.

Q: What if there is no joint or chamber rule governing a particular situation or procedure? Is there a secondary authority that provides guidance?

A: Yes, it's called Mason's Manual of Legislative Procedure. The joint, Senate, and House rules each provide that this manual governs the proceedings of the Senate and House in all cases not covered by the rules (Joint Rule 60-20, Senate Rule 60-20, House Rule 70-40). The manual is published by the National Conference of State Legislatures in cooperation with the American Society of Legislative Clerks and Secretaries.

Q: Tell me about the Rules Committees. What do they do?

A: The Senate and House Rules Committees are standing committees of the Legislature (Senate Rule 30-20, House Rule 30-10). The Senate Committee on Committees appoints the Senate members of the Rules Committee. In the House, the Speaker determines the size and party division of the committee. Each party then appoints its own members. Additionally, the Speaker may appoint a member to serve at large. (House Rule 10-20)

Duties common to both the Senate and House Rules Committees include: preparing joint and chamber rules before the session; hearing and taking executive action on joint and simple resolutions amending rules; considering violations of the Legislature's

harassment policy referred to the committees by the presiding officer (Joint Rule 10-85); approving appointment of additional legislative aides per member (Senate Rule 10-120, House Rule 10-90); and approving introduction or receipt of a bill having the same purpose as another bill that has been finally rejected by the chamber (Joint Rule 40-70).

The Senate Rules Committee also has duties relating to ethics. Upon request of a Senator, the committee may convene to consider referring an ethics matter to the Ethics Committee. The Senate Rules Committee must prepare a written statement of issues to be addressed by the Ethics Committee. (Senate Rule 30-130)

Duties unique to the House Rules Committee involve hearing appeals of the presiding officer's interpretation of rules upon the request of 15 Representatives (House Rule 70-50) and recommending to the House that a member be censured or subject to other action (House Rule 20-90).

Do you have rule questions that you would like us to cover in this column? If so, send them to Lois Menzies, Legislative Services Division, PO Box 201706, Helena, MT 59620-1706 or lomenzies@mt.gov.

BACK PAGE

TO HAVE YOUR HAM AN' EGGS IN CAROLINA

By Leanne Kurtz
Legislative Research analyst

THE ORANGE BLOSSOM SPECIAL COMIN' DOWN THE RAILROAD TRACK

Their names suggest romance and adventure: Silver Meteor, California Zephyr, Sunset Limited, Coast Starlight, Desert Wind, Texas Eagle, Empire Builder. They have been celebrated in song: "City of New Orleans", "Marrakesh Express", "Chattanooga Choo Choo", "Atchison, Topeka, and Santa Fe", and "The A-Train". They have been the chosen setting for writer Agatha Christie (*Murder on the Orient Express*) and movie director Alfred Hitchcock (*Strangers on a Train*). Even today, when you can wake up in Miami, catch a plane, and be enjoying a crab cocktail along Puget Sound by late afternoon, passenger trains harbor a mystique and fill a niche that no other mode of public transportation can. And while Amtrak, the government-subsidized passenger rail service, finds itself in dire financial straits, organizations all over the country, including Montana, are committed to the preservation and enhancement of passenger rail. The history of passenger rail is a colorful one and the future is anybody's guess in this new world where terrorism, economic downturns, gas prices, and budget crises dominate the news and dictate the traveling public's behavior.

TIME TRAVEL

To witness the birth of the modern railroad, hop in the Way Back Machine to 1550s Germany. Innovative Rhinelanders built raised wooden rails, called wagonways, above the rough and rutted roads, allowing horse-drawn carts and wagons to travel with relative ease. Iron replaced wood by 1776, though nothing had yet replaced the horse. In 1789, Englishman William Jessup reinvented the wheel, designing a new iron grooved wheel that gripped the rail. Next came the steam engine and its use in a vehicle designed to travel on rails. Shortly after 1814, George Stephenson, an English colliery engine builder, convinced his employers to try steam power and built the Locomotion for the Stockton and Darlington Railway. In 1825, the Stockton and Darlington Railway carried six loaded coal cars and 21 passenger cars with 450 passengers across nine miles of the English countryside in about an hour. So where were the Americans?

THE LITTLE ENGINES THAT DID

Eighteen-thirty was the magic year for passenger rail in the United States. In that year, both the Best Friend of Charleston and the Tom Thumb hauled passengers over the rails employing steam engines. Establishment of the Best Friend was intended to alleviate the desperate economic recession in which the seaport of Charleston found itself. Much of Charleston's commerce was marching westward with the inland settlements, so merchants invested heavily in the concept of a railroad to link Charleston with inland markets. In 1827 the state legislature chartered the South Carolina Canal and Rail Road Company and by the fall of 1830, a steam engine arrived from West Point Foundry in New

York. On Christmas Day, the Best Friend hauled 141 passengers for six miles. The *Charleston Courier* raved:

"The one-hundred and forty-one persons flew on the wings of wind at the speed of fifteen to twenty-five miles per hour, annihilating time and space...leaving all the world behind. On the return we reached Sans-Souci in quick and double quick time, stopped to take up a recruiting party--darted forth like a live rocket, scattering sparks and flames on either side--passed over three salt creeks, hop, step and jump, and landed us all safe at the Lines before any of us had time to determine whether or not it was prudent to be scared."

In 1829, Peter Cooper¹ designed and built the Tom Thumb, hoping to persuade the owners of the Baltimore and Ohio Railroad (B & O) to turn their horses out to pasture in favor of his locomotive. B & O bought Cooper's reasoning and in early summer, 1830, the Tom Thumb hauled its first passengers 13 miles from Baltimore to Elicott Mill, Maryland. B & O's chief engineer said that the day's "experiment" must

"establish beyond a doubt the practicality of using locomotive steam power on the Baltimore and Ohio Railroad for the conveyance of passengers and goods at such speeds and with such safety as will be perfectly satisfactory to all parties concerned and with such economy as must be highly flattering to the interest of the company."

A few weeks later, the owner of an area stagecoach line challenged the Tom Thumb to a race, contending that his horse, Dobbin, was not only faster but more dependable than the machine. He had it partly right. The machine led for much of the course but then an engine belt slipped. With no belts or wheels to come loose, a tired Dobbin crossed the finish line ahead of the crippled Tom Thumb. The outcome of the race, however, did not cripple this new technology whose time in America had come. In the absence of other practical long-distance modes of transportation to compete, passenger rail service spread quickly throughout the country and the industry enjoyed unrivaled success for much of the late 19th and early 20th centuries.²

IN WITH THE NEW

The decade remembered for flappers, Duke Ellington, Gatsby and Daisy, radio, Hemingway, speakeasies, Henry Ford, and Al Capone also marked the beginning of the

¹ Peter Cooper's legacy is not confined to innovations in transportation. He also was the first American to patent the manufacture of gelatin. A cough syrup manufacturer bought the patent from Cooper in 1895, made it into a packaged commercial product, and voila! Jell-O was born.

² By 1840, 2,818 miles of track had been laid down and a mere 20 years later, track mileage had grown to 30,000 miles. In the 1880s 70,000 more miles of track was built and between 1896 and 1916, passenger rail travel tripled in volume.

decline of passenger rail. By the end of the Roaring Twenties when all things young and new were fashionable and when bold innovations in technology appeared around every corner, the mighty passenger train industry had summited the pass of its dominance and was starting its long, slow creep down the incline. According to David C. Nice, author of AMTRAK: The History and Politics of a National Railroad, in the late 1920s, 20,000 passenger trains cross-crossed the country; by 1970, there were 450, 100 of which would soon be discontinued. From 1920 to 1970, passenger volume fell by 80%. Nice discusses the more prominent theories for passenger rail's near-demise during those years, including financial difficulties, technological innovations, the direction of government subsidies, and the railroad companies themselves.

DERAILMENT

By the late 1930s, the passenger rail industry was losing more than \$200 million annually and by 1957, the losses totaled \$700 million. The industry experienced a windfall of sorts in 1960, losing a comparatively modest \$400 million annually. That kind of continual pummeling is bound to derail any business.

Passenger rail travel did gain a little ground during the unlikely era of the Great Depression. In 1934, the Burlington, Chicago and Quincy Railroad introduced the shiny stainless steel, diesel-powered Zephyr and the Union Pacific rolled out the gasoline-powered M-10,000. Both trains were a favorite display at the Century of Progress Exhibition in Chicago that year. The Zephyr's maiden trip from Denver to Chicago for the exhibition demonstrated one of its touted advantages--speed. The train cruised 1,015 miles in almost half the time (13 hours compared to 25½ hours) that a traditional steam engine could travel between the two cities. But a shiny exterior, a more comfortable interior, and increased speed would not be enough to restore the troubled industry to its former glory.

Before the development of the Zephyr, Henry Ford dealt a significant blow to passenger rail with his introduction of assembly line production of the automobile. Although the French manufactured the first automobile³ for sale, Ford's assembly line revolutionized the auto industry and by 1927, his factory had cranked out 15 million Model Ts.⁴ As anyone who has ever tried to incorporate public transportation into a metropolitan plan can attest (especially in Los Angeles), people love their cars. The independence, flexibility, economy, and convenience that autos afforded was unparalleled, and advances in air travel offered travelers the speed with which no other mode of transportation (not even the Zephyr) could compete.

³ French manufacturers Panhard and Levassor marketed autos in 1889 and Peugeot rolled its out in 1891.

⁴ The 1920s saw an almost threefold increase in the number of automobiles registered in the United States.

The Eisenhower administration's push for the completion of an interstate highway system added what some theorists believe was another nail to passenger rail's coffin by creating a massive consumer of federal subsidies. Nice cites a 1982 Congressional Budget Office report that estimated that between 1920 and 1978, approximately \$150 billion federal, state, and local government funds were allocated to highways and \$40 billion was used to subsidize airlines. In a recent opinion column appearing in *Time* magazine entitled "Why Rail Travel is the Future", columnist Lance Morrow claimed that "passenger trains receive 4% as much in federal subsidies as the \$13 billion given annually to the airline industry. Highways receive \$33 billion in federal funds."

Still others hypothesize that some of the blame for passenger rail's decline rests on the shoulders of the railroads themselves. Those that hauled both passengers and freight quickly realized that freight was the real moneymaker. Nice borrows a quote from the 1986 annual report of the National Railroad Passenger Corporation which credits a railroad executive prior to the advent of Amtrak as having said, "We're still listed as running passenger service . . . , but we try not to do it. [D]amn all passengers on a short-haul, anyway. . . . If . . . I have to carry passengers I'll make it so uncomfortable, inconvenient, and disagreeable for them that they'd wish they never bought a two-bit ticket."

In 1967, the U.S. Postal Service drove a golden spike through the heart of the passenger railroad industry when it cancelled its first-class mail contracts with railroads, opting instead for trucks and airplanes. Those railroad companies that had managed to weather the competition from automobiles and airplanes suffered dramatically from the Postal Service's decision.

A PHOENIX?

Astride his white horse, attorney Anthony Haswell rode into Washington to try and save passenger trains. In 1968 he founded the National Association of Railroad Passengers (NARP), a lobbying organization whose purpose was to convince Congress, the Department of Transportation, and the Federal Railroad Administration (FRA) of the value of passenger rail. NARP's efforts, and work by the Association of American Railroads in support of public subsidies for passenger rail service, paid off and on October 14, 1970, Congress passed the Railroad Passenger Service Act that created a quasi-public corporation dubbed Railpax. On October 30, President Nixon signed Public Law 91-518 and the National Railroad Passenger Corporation (NRPC) was born.

AMTRAK, CHAPTER 1

Railroads that still operated passenger trains at the end of October 1970 had until May 1, 1971, to become members of NRPC. To join, a railroad had to pay in cash, purchase common stock in the company, or offer passenger equipment or services in an amount based on half of the railroad's losses in its final year of operation. Membership had its advantages and most railroads hopped aboard to escape the financial burden of passenger railroad operation. A panel of planners that included presidential appointees and representatives of the FRA and the Department of Transportation established the NRPC's system of routes.

Twenty-one "city pairs" formed the new system's network and the planners divided the system among short-haul trains (those that would travel 300 miles or less) and long-haul trains. For a city to be considered as a short-haul or long-haul endpoint, it had to have a population base of at least one million. One of the original city pairs linked Chicago with Seattle following the old Great Northern route that had for years been called the "Empire Builder".⁵ The service through Montana still exists and traverses Montana along the Hi-Line.

NRPC also enlisted an advertising firm to design a logo and propose a catchy name for the railroad. The firm developed the inverted arrow logo that is still used today, chose the red, white and blue colors, and coined the name Amtrak, short for "American Travel by Track".⁶

May 1, 1971, marked Amtrak's first day of operation with 25 employees running 184 trains on a 23,000 mile network of track, serving 314 communities. Although an attention-grabbing logo and patriotic colors adorned the railroad's time table, the trains themselves were a mish-mash of various colors and styles. During its first few years of operation, Amtrak made do with second-hand engines, sleeper cars, and coaches salvaged from the many defunct railroads that had been hauling passengers for decades. The array of colors and styles resulted in 1971-1974 being referred to as Amtrak's "Rainbow Era". Would there be a pot of gold in the company's future?

A LONG AND WINDING ROAD

Amtrak has certainly seen its ups and downs during its more than 30 years of operation. Trains taken out of service for repair, aging cars, and late arrivals have plagued the service to varying degrees. The railroad has taken significant steps to improve many aspects of its service, however, from better food to en-route movies to advertising, route modifications, and coordinated bus service. According to Nice, total passenger miles rose from 3.04 billion to 6.27 billion in 1991 and data from Amtrak counts 23.5 million passengers in FY 2001, an all-time high. But profits have been elusive.

During the Clinton administration, Congress, Amtrak, and the administration agreed that Amtrak would operate without federal financial assistance after FY 2002. However, in February 1999, the U.S. Department of Transportation's Inspector General and the General Accounting Office testified before Congress that the railroad would indeed need continued federal financial assistance after FY 2002.

Congress must have foreseen this development. The 1997 Amtrak Reform and Accountability Act provided that if Amtrak does need federal money after FY 2002, the

⁵ The "Empire Builder" is named after the moniker given to James J. Hill (1838-1916), a financier, developer, and rail baron who is credited with transforming the Pacific Northwest with his Great Northern Railroad Company, linking the Midwest with Pacific Coast markets.

⁶ NRPC remains the railroad's "official" name.

Amtrak Reform Council created by the Act must develop and submit to Congress a restructuring plan for the railroad and Amtrak must submit a liquidation plan. On February 7, 2002, the Amtrak Reform Council submitted such a plan--the Action Plan for the Restructuring and Rationalization of the National Intercity Rail Passenger System.

In 2001, Amtrak's losses totaled \$1.1 billion. The Bush administration recommended to Congress that a mere \$521 million be appropriated for Amtrak for FY 2003 which constitutes less than half of what Amtrak claims it needs to continue operating and the threat of the shutdown of the entire system loomed early this summer. Drastic action was temporarily averted,⁷ however, and restructuring and financing of America's passenger rail system are on Congress' agenda when it returns from its summer recess. Meanwhile, numerous advocacy groups in Montana and nationwide are prepared to go to bat for passenger rail and Amtrak.

RIDE THE HI-LINE (AND THE LOW-LINE?)

Next to the advertisements for the circus coming to town and the rodeo are light blue "We Support Amtrak" signs taped in nearly every business window in downtown Shelby. Residents along Montana's Hi-Line view the Empire Builder as vital to their communities' economies and as an essential travel service.

In 1995, Darlene Jenkins started Save Amtrak to respond to an Empire Builder reduction in service. Save Amtrak hoped to educate the public and policy makers on the problems that arose from the cutbacks (including the layoff of Darlene's husband, a conductor for the railroad). Thinking the future of the Empire Builder was relatively secure, Save Amtrak disbanded in 1997. Developments in the last couple of years have sparked the organization's reactivation--this time with a different goal in mind. According to the organization's website, Save Amtrak's mission is to galvanize the support for Amtrak "into a tool our elected officials can use."

Information collected by Save Amtrak indicates that in FY 2001 Amtrak's total Montana ridership numbered 122,203 passengers. The railroad employed 47 Montana residents with a total payroll of \$2.6 million during calendar year 2000. Through its website the group promotes the importance of the railroad:

"Trains are critical to the more remote reaches of this country that are seldom well served by convenient or economic air transportation. In many of these underserved communities, Amtrak provides the only public transportation alternative. Also, beyond tourists and business travelers, Amtrak provides critical service to a variety of populations, including students traveling to and from

⁷ In a June 28, 2002 letter to all Amtrak employees, President and CEO David Gunn said, "After much work, we reached a final agreement with the Department of Transportation...that resolves our short term financial problem. As I told you Wednesday when the tentative agreement was reached, we will get an immediate loan of about \$100 million and then we will together ask for Congressional action on the balance of what we need."

college, senior citizens visiting medical specialists, and the physically disabled who cannot fly or drive.

Beyond connecting small towns to economic hubs and other towns along the way, Amtrak's long-distance rail service is an economic engine for towns like ours. In addition to the employee wages paid, and goods and services purchased directly by Amtrak, the trains bring people and goods that feed local businesses. Therefore, the elimination of Amtrak trains and jobs would have a ripple effect in our community."

While Save Amtrak's focus remains the Empire Builder, the aim of another group, the Montana-Wyoming Association of Railroad Passengers (MWARP) is the addition of a route through southern and western Montana.⁸ During the 2001 legislative session, Representative Michelle Lee of Livingston carried a bill (House Bill No. 378) and a resolution (House Joint Resolution No. 3) supported by MWARP. The organization envisions a route from Denver to Spokane through southern and western Montana. Testimony provided to the House Taxation Committee during its hearing on HB 378 extolled the economy and efficiency of rail travel over other modes of transportation and discussed the potential economic development fallout anticipated to follow the new route.

As enacted, HB 378 consisted of one section, codified as section 60-11-202, MCA, which reads:

"(1) There is a southern amtrak route account in the state special revenue fund. Money deposited in the account must be used for an engineering and operating study by amtrak of a rail passenger route across southern Montana. The department of transportation shall administer the account.

(2) The department may accept gifts, grants, or donations for the engineering and operating study."

According to the Department of Transportation, the account has received three donations, totaling \$1,777.

HJR 3 simply expressed the Montana Legislature's "support for the development of an Amtrak route between Denver and Spokane that passes through southern and western Montana."

MWARP is not letting the recent developments with Amtrak's finances deter it from forging ahead with the southern route idea.

⁸ MWARP does not take a myopic approach in realizing its goal. For awhile this year, MWARP set aside its southern route project to help Save Amtrak in its efforts with the Empire Builder.

James Green, MWARP's president and newly-elected member of the National Association of Railroad Passengers board of directors, said that the Wyoming Economic Council is ready to chip in some funding for MWARP as needed, and that "whatever is decided by Congress for the reorganization of passenger rail, we will be ready."⁹

CROSSROADS

Sixteenth century Germans could never have envisioned that their invention of wagonways would progress to a technology that allows people to dash from one place to another at speeds of up to 150 miles an hour; no more than we can predict what's down the line for this mainstay of American travel. Though not as fast as airplanes or as flexible as private automobiles, many people still love to take the train--whether it is for the sake of nostalgia, convenience, the breathtaking scenery that rolls past the window, the gentle swaying of the cars, the comparatively economical ticket prices, or the opportunity to meet interesting people while passing through parts unknown. Passenger rail remains a permanent fixture on the American transportation mosaic. The Bush administration, Congress, and advocacy groups like Save Amtrak, MWARP, and the National Association of Railroad Passengers will determine whether Amtrak's red, white and blue will continue to color that mosaic or if an entirely new collection of hues will appear. There's a rainbow of possibilities.

⁹ A recent survey conducted by the *Washington Post* suggests that Green's troops should have significant support. Fifty-one percent of people responding to the survey favored maintaining Amtrak funding at current levels and an additional 20% would be happy with more funding. Just 17% favored ending all government subsidies to Amtrak.



INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL BLDG.

SEPTEMBER

September 5, Revenue and Transportation Committee

September 9-10, Law and Justice Committee

September 11, Education and Local Government Committee, Room 102, 9 a.m.

September 12, SJR 22 Subcommittee on Health Care and Health Insurance

September 13, Environmental Quality Council, Room 102, 8 a.m.

September 13, TAC Transmission Subcommittee, Room 137, 9 a.m.

September 13, Economic Affairs Committee

September 16, State Administration and Veterans' Affairs Committee

September 16, State-Tribal Relations Committee conference call, Room 155, 9 a.m.

September 17-18, HJR 1 Subcommittee on Public Mental Health Issues

September 19, Transition Advisory Committee, Ruby's Inn and Convention Center, 4825
North Reserve St., Missoula

September 30, Legislative Council

OCTOBER

October 3-4, Legislative Finance Committee, Room 102

NOVEMBER

November 18, Legislative Audit Committee

November 20, Senate and House caucuses, morning

November 20, Law School for Legislators, afternoon

November 20-22, New Legislator orientation